

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE NATIONAL PRESCRIPTION
OPIATE LITIGATION

This document relates to:

*The Blackfeet Tribe of the Blackfeet Indian
Reservation v. AmerisourceBergen Drug
Corporation et al.*

Case No. 18-op-45749

**MDL No. 2804
Case No. 17-md-2804
Judge Dan Aaron Polster**

**MOTION TO DISMISS FIRST AMENDED COMPLAINT BY
DEFENDANTS CVS PHARMACY, INC., CVS INDIANA, L.L.C., WALMART INC.,
WALGREEN CO., AND WALGREEN ARIZONA DRUG CO.**

Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), Defendants CVS Pharmacy, Inc., CVS Indiana, L.L.C., Walmart Inc., Walgreen Co., and Walgreen Arizona Drug Co. (the “Moving Defendants”) move to dismiss the Blackfeet Tribe’s First Amended Complaint for the following reasons:

1. Plaintiff lacks Article III standing to bring its claims because it alleges only harm that is common to the general public and derivative of harm incurred by third parties.

2. The Complaint purports to state claims against the Moving Defendants in their capacities as distributors, not dispensing pharmacies, and any claims against the Moving Defendants as dispensing pharmacies are manifestly insufficient under pleading rules.

3. Plaintiff fails to state any claims on which relief can be granted. The Complaint fails to allege facts showing that the Moving Defendants negligently distribute prescription opioids, that the Moving Defendants' lawful distribution of a highly regulated product creates a public nuisance, that the Moving Defendants are liable to Plaintiff under an unjust enrichment theory, that the Moving Defendants engaged in a civil conspiracy, or that the Moving Defendants violated the Montana Unfair Trade Practices and Consumer Protection Act.

For these reasons, and as set forth more fully in the accompanying Memorandum of Law and in the motion submitted by the Distributor Defendants, in which the Moving Defendants join, the Complaint must be dismissed.

Dated: 31 August 2018

Respectfully submitted,

/s/ Tara A. Fumerton

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*Attorneys for Walgreen Co. and
Walgreen Arizona Drug Co.*

CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2018, this Motion to Dismiss was filed electronically on the master docket for this matter. Case Management Order One provides that “[e]lectronic case filing of a document, other than an initial pleading, in the master docket shall be deemed to constitute proper service on all parties.” ECF No. 232 at 8 (No. 1:17-MD-2804).

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